

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	MM Docket No. 00-69
FM Broadcast Stations.)	RM-9850
(Cheboygan, Rogers City, Bear Lake, Bellaire,)	RM-9945
Rapid River, Manistique, Ludington, Walhalla)	RM-9946
and Onaway, Michigan))	

REQUEST FOR SUPPLEMENTAL INFORMATION

Adopted: October 16, 2002

Released: October 18, 2002

Comment Date: December 2, 2002

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a Petition for Reconsideration filed by Fort Bend Broadcasting Company ("Fort Bend") and a Petition for Reconsideration filed by Northern Radio of Michigan, Inc. ("Northern Michigan") both directed to the *Report and Order* in this proceeding.¹ Northern Radio Network Corporation, Lake Michigan Broadcasting, Inc. and Northern Michigan each filed an Opposition to Petition for Reconsideration. Fort Bend filed a Partial Opposition to Petition for Reconsideration directed to the Northern Michigan Petition for Reconsideration and a Reply to Oppositions to Petition for Reconsideration. For the reasons discussed below, we are issuing this *Request for Supplemental Information*.

Background

2. The *Report and Order* in this proceeding allotted Channel 292A to Onaway, Michigan, as a first local service, and allotted Channel 249C3 to Cheboygan, Michigan, as a second local service. In doing so, the *Report and Order* denied a Counterproposal filed by D&B Broadcasting LLC, previous licensee of Station WSRQ, proposing the substitution of Channel 260C1 for Channel 260A at Bear Lake, Michigan, reallocation of Channel 260C1 to Bellaire, Michigan, and modification of the Station WSRQ license to specify operation on Channel 260C1 at Bellaire.² In order to replace the removal of the sole local service at Bear Lake, D&B Broadcasting had proposed the allotment of Channel 291A to Bear Lake as a "backfill." D&B Broadcasting also proposed the allotment of Channel 259A to Rapid River, Michigan, and related channel substitutions at Manistique, Ludington and Walhalla, Michigan. In the *Report and Order*, we determined that the proposed site for a Channel 291A allotment at Bear Lake was located in the Bear Lake Swamp and was unusable for a transmitter site. As such, a reallocation of

¹ Cheboygan, Rogers City, Bear Lake, Bellaire, Rapid River, Manistique, Ludington, Walhalla and Onaway, Michigan, 17 FCC Rcd 8799 (M.M. Bur. 2002).

² Fort Bend is now the licensee of Station WSRQ.

Channel 260C1 to Bellaire would be removing the sole local service at Bear Lake. In view of this determination, the *Report and Order* did not address the Northern Michigan allegation that a Channel 260C1 allotment at Bellaire would not be in compliance with Section 73.315 of the Rules due to a terrain obstruction between the proposed transmitter site and Bellaire.

3. In its Petition for Reconsideration, Northern Michigan reiterates its contention that a terrain obstruction between the proposed transmitter site and Bellaire precludes line-of-site service to Bellaire. In support of this contention, Northern Michigan has included a study from an air space consultant to the effect that the Federal Aviation Administration would not approve a tower of sufficient height to provide line-of-sight service to Bellaire. In regard to this issue, Fort Bend contends, in its Petition for Reconsideration, that a tower of 299 meters above average terrain would provide line-of-sight to Bellaire. At this juncture, it is necessary to make a dispositive determination as to the maximum tower height that would receive Federal Aviation Administration approval. In order to resolve this issue on the basis of a complete record, we request that Fort Bend, Northern Michigan and any other interested party submit supplemental information addressing this issue.

4. Interested parties may file comments on or before December 2, 2002. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the following counsel:

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5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rulemaking proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.³

6. For further information concerning this matter, contact Robert Hayne, Media Bureau, (202) 418-2177. For purposes of this restricted notice and comment rulemaking proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or the staff for clarification or adduction of evidence or resolution of the issues in the proceeding. However, any new written information elicited from such request or summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte

³ See *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

presentation and shall not be considered in this proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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Media Bureau